2006

Emergency Physicians Integrated Care v. Salt Lake County, a political subdivision of the State of Utah : Brief of Appellant

Utah Court of Appeals

David Yocom; Salt Lake County District Attorney; Donald H. Hansen; Melanie F. Mitchell; Deputy District Attorneys; Attorneys for Defendant/Appellee.
Brian S. King; James L. Harris, Jr.; Attorneys for Plaintiff/Appellant.

IN THE UTAH SUPREME COURT

EMERGENCY PHYSICIANS INTEGRATED CARE,	:	**BRIEF OF APPELLANT**
Plaintiff/Appellant,	:	
vs.	:	Case No. 20060255-SC
SALT LAKE COUNTY, a political subdivision of the State of Utah,	:	
Defendant/Appellee.	:	

AN APPEAL FROM SUMMARY JUDGMENT ENTERED BY THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, SALT LAKE DEPARTMENT, the Hon. Paul G. Maughan presiding.
(Trial Court Case No. 030901884)

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ORAL ARGUMENT REQUESTED

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LIST OF PARTIES IN THE COURT BELOW

The following is a complete list of the parties in the proceedings before the Third Judicial District Court:

JUDGE

The HON. PAUL G. MAUGHAN, Judge Presiding, Third Judicial District, Salt Lake Department.

PARTIES

1. Plaintiff EMERGENCY PHYSICIANS INTEGRATED CARE, represented by Brian S. King.

2. Defendant SALT LAKE COUNTY, a political subdivision of the State of Utah, represented by David Yocom, Salt Lake County District Attorney, Donald H. Hansen and Melanie F. Mitchell, Deputy District Attorneys.

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PRIOR OR RELATED APPEALS

There are no prior or related appeals.

IN THE UTAH SUPREME COURT

EMERGENCY PHYSICIANS INTEGRATED CARE,	:	**BRIEF OF APPELLANT**
Plaintiff/Appellant,	:	
vs.	:	Case No. 20060255-SC
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AN APPEAL FROM SUMMARY JUDGMENT ENTERED BY THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, SALT LAKE DEPARTMENT, the Hon. Paul G. Maughan presiding.
(Trial Court Case No. 030901884)

Plaintiff/Appellant Emergency Physicians Integrated Care ("EPIC") submits the following brief:

STATEMENT OF JURISDICTION

The Supreme Court of Utah has jurisdiction in this matter pursuant to Utah Code Ann. § 78-2-2 (3)(j) (1953 as amended).

ISSUES PRESENTED FOR REVIEW

1) Whether Salt Lake County has an obligation to pay for emergency medical services provided to inmates in its custody by professional providers.

2) Whether Salt Lake County should pay the reasonable value for emergency medical services provided to inmates in Salt Lake County custody by professional providers.

ISSUES RAISED AND CONSIDERED

Both issues were raised in plaintiff's Amended Complaint (R. 62), and plaintiff's Motion for Partial Summary Judgment and the memorandum in support of that motion (R. 81 & 111).

STANDARD OF REVIEW

"Because summary judgment is granted as a matter of law, [appellate courts] give the trial court's legal conclusions no particular deference." Mast v. Overson, 971 P.2d 928, 931 (Utah Ct. App. 1998) (citation omitted). The issues presented are questions of law. As such, they are reviewed under the "correctness" standard. State v. Pena, 869 P.2d 932, 936 (Utah 1994); Certified Surety Group, Ltd. v. UT Inc., 960 P.2d 904, 905-06 (Utah 1998) ("In reviewing a trial court's grant of summary judgment, 'we do not defer to the trial court's conclusion of law but review them for correctness.'" (citation omitted)).

The underlying facts are not in dispute and should be reviewed in a light most favorable to plaintiff/appellant. Bowen v. Riverton City, 656 P.2d 434, 436 (Utah 1982) (court to present facts and reasonable inferences from them in a light most favorable to the party opposing summary judgment); Harnicher v. University of Utah Med. Ctr., 962

P.2d 67 (Utah 1998) (on summary judgment, the court must view the facts in the light most favorable to the non-moving party).

STATEMENT OF THE CASE

1. EPIC brought the action below seeking compensation at fair market value for the medical services they provide to Salt Lake County detainees and inmates. Complaint (R. 1); Amended Compliant (R. 62).

2. EPIC submitted a Motion for Summary Judgment on May 31, 2005 (R. 111).

3. Defendant Salt Lake County ("the County") filed a Memorandum in Opposition to Plaintiff's Motion for Summary Judgment (R. 135) and Cross Motion for Summary Judgment on July 13, 2005 (R. 132).

4. After completing the briefing on those motions, the parties presented oral argument on December 15, 2005 (R. 257). At that time, the district court judge requested additional briefing which was submitted by the parties on January 17, 2006 (R. 191, 200, 206 & 213).

5. On February 8, 2006, the court issued a Memorandum Decision and Order ("Memorandum Decision"), denying EPIC's Motion for Summary Judgment and granting the County's Motion for Summary Judgment "to the extent that the Plaintiff has not shown that it is entitled to recover under a claim of *quantum meruit*." Memorandum Decision, p. 1 (R. 229). The Court entered an Order Granting Defendant's Motion for

Summary Judgment and Denying Plaintiff's Motion for Summary Judgment on March 2, 2006 (R. 236)

6. This timely appeal followed (R. 245).

STATEMENT OF FACTS

1. EPIC is a Utah limited liability corporation which was formed for the business purpose of arranging for the billing and collection of payment for services provided by a number of different emergency physicians in the State of Utah. Many of the physicians who have an ownership interest in EPIC provided medical care to Salt Lake County jail inmates in need of emergency medical treatment. EPIC holds the right to pursue payment of claims arising out of treatment provided by emergency room physicians and that are the subject of this case. Amended Complaint, ¶ 1 (R. 62); Affidavit of Robert Parker ("Parker Aff."), ¶ 3 (R. 118).

2. Salt Lake County is a political subdivision of the State of Utah and as part of its activities operates correctional facilities within the County. Complaint, ¶ 2 (R. 63); Answer, ¶ 2 (R. 75).

3. Beginning in February of 2000, and continuing thereafter, many County inmates have been treated by EPIC physicians at a number of different health care facilities within Salt Lake County. Amended Complaint, ¶ 6 (R. 63); Answer, ¶ 6 (R. 75).

4. When medical situations arise at the jail, nurses contracted by the County to provide services, and who work at the jail, screen the inmates. A nurse determines whether the medical care required is either beyond the capacity of the medical personnel at the jail to handle or whether emergency medical services from outside the jail are necessary. Deposition of Captain Troy Dial ("Dial Depo"), pp. 24:3-28:12 (R. 103-104). A copy of the Dial Depo is attached to Plaintiff's Memorandum in Support of Partial Summary Judgment (R. 98-110).

5. Where medical services require emergency care or are beyond the capacity of County-contracted, on-site medical personnel, inmates are transported to a nearby hospital. Consequently, there is a regular need for emergency medical services from physicians outside the jail on the part of Salt Lake County jail inmates. Id. (R. 103-104).

6. When individuals in need of emergency medical care present themselves to health care facilities, the facilities and the individual physicians working at the facilities, have an obligation under Federal law to provide emergency medical treatment, at least until the patient is stable, regardless of the individual's ability to pay. Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. § 1395 dd.

7. If the County did not provide or arrange for the provision of competent emergency medical services to inmates in need of those services, the County

acknowledges it may be liable to inmates for damages arising out of the failure to provide those services. Dial Depo, p. 14:23-15:3 (R. 101).

8. The County also acknowledges that it has a Constitutional obligation to provide or arrange for the provision of competent medical care for the inmates at the jail. Dial Depo, pp. 11:22-12:9 (R. 100).

9. EPIC has requested payment for its emergency medical services provided to Salt Lake County jail inmates from the County but, as to some inmates, the County has denied that it has any legal duty to pay for the medical services provided by EPIC. Answer, Second Defense, ¶ 3 (R. 75).

10. Alternatively, the County has maintained the right to pay EPIC for emergency medical services based on Medicaid Fee Schedules established by the State of Utah. Answer, Sixth and Seventh Defenses (R. 76-77).

11. Expenses for medical services provided by physicians are billed separately from expenses for medical care provided by a hospital or other health care facility. The medical billings for health care facilities include charges for services such as room and board, hospital ancillary services and supplies. The separate billing for professional services is for the services provided by the physician only. Affidavit of James Antinori, M.D. ("Antinori Aff."), ¶¶ 4-5 (R. 115).

12. Fee schedules have been developed by the Utah Medicaid program for both professional services and for health care facility charges. Relative to their respective billed charges, the rate of reimbursement for emergency medical services provided by health care facilities is significantly higher than the rate of reimbursement for emergency medical services provided by professionals. Parker Aff., ¶ 4 (R. 118).

13. Effective April 30, 2001, Utah Code Ann. §17-50-319, which enumerates "county charges," was amended. Under the amended statute, unless there is a contract between a health care facility and a County, the County is required to pay the health care facility's expenses for care provided to jail inmates only to the extent that the inmate is not covered by any private insurance and at a rate no higher than the Utah State Medicaid Fee Schedule. Utah Code Ann. §17-50-319 (1)(k) & (2)(a)&(b). The statute is silent as to how heath care professionals must be compensated.

14. During debate on the amendment to Utah Code Ann. §17-50-319, the legislature considered making all health care providers subject to payment at the Utah State Medicaid rates. However, language referring to medical services provided by any "health care provider" was purposefully deleted to ensure that the scope of the legislation did not compel health care professionals (as opposed to health care facilities) to accept payment at Medicaid rates. Affidavit of Brian S. King ("King Aff.") (R. 127-128; 130), Exhibits A and B; Antinori Aff., ¶¶ 6-7 (R. 115-116).

15. Health care professionals, such as emergency room doctors, opted out of the amendments to Utah Code Ann. §17-50-319 because the discrepancy between the fee schedules established by Medicaid for reimbursement of health care facilities for emergency services versus the reimbursement rate for emergency room physicians is significant. While health care facilities are reimbursed at a rate of approximately 98% of the health care facility's usual and customary charges for emergency room services under the Medicaid schedules, those schedules pay only a range of between 18 to 27% of usual and customary emergency room physician charges. Parker Aff., ¶ 5-6 (R. 118); Antinori Aff, ¶ 7 (R. 116).

16. The billed charges from health care professionals for their services are developed by taking into account the training of those professionals, the market in which the professionals are working and the overhead associated with the professionals' services. The billed charges are the "usual and customary charges" of the physicians and are the same regardless of who receives or pays for the services. The billed charges represent the reasonable value of the physicians' services. Parker Aff., ¶ 7. (R. 119).

SUMMARY OF THE ARGUMENT

It is well established that governmental entities have a constitutional obligation to provide medical care to inmates and pretrial detainees. The U.S. Supreme Court ruled that governments are Constitutionally required to provide necessary medical care to

individuals who are in governmental custody or have been detained. However, once the governmental entity ensures that medical care is provided, the issue of how the cost of that care should be allocated between the entity and the provider of the care is a matter of state law. The state law that should have been applied by the lower court is two-fold, found both in a statutory basis and state law equitable principles.

The terms of Utah Code Ann. §17-50-319 require the County to pay for emergency medical services of county jail inmates. The lower court erred in determining that Utah Code Ann. §17-50-319 did not specifically allocate costs of emergency services to counties. The Utah statutory scheme contemplates that counties should be responsible for expenses related to its penological duties. Several provisions in that section obligate of the County to pay for emergency medical services to County jail inmates, including "the expenses necessarily incurred in the support of persons charged with or convicted of a criminal offense and committed to the county jail."

In addition, the County is responsible to pay for the medical services provided by EPIC under equitable principles. The right is found in EPIC's *quantum meruit* claim. *Quantum meruit* operates to prevent the County's enrichment at EPIC's expense. Salt Lake County knowingly received a benefit, and under circumstances of this case, it is unjust for the County to retain that benefit without paying EPIC.

Salt Lake County has received and continues to receive a substantial benefit as a result of the medical treatment provided to inmates by EPIC physicians. The County discharges a key constitutional duty by using EPIC doctors. The County benefits through money saved by not retaining a staff of physicians capable of dealing with all emergency care that may arise at the jail, along with associated savings of overhead costs. The County limits its exposure to legal claims that it might otherwise face. Alternatively, the measure of damages is the usual and customary charges of the physicians for their services.

The County admits that it is Constitutionally required to provide medical services to County jail inmates as the need to provide medically necessary care for the inmates arises. Likewise, the County acknowledges that on a regular basis, it relies on and regularly utilizes care provided by EPIC physicians. The County recognizes that these physicians are highly trained professionals.

The County is unjustly enriched by retaining the benefit bestowed by EPIC without remuneration. The County asserted that it is willing to pay the EPIC physicians, but only at the Medicaid rates. That level of compensation is significantly less than the billed charges for the physicians. The measure of recovery is the value of the benefit conferred on the County, and should be calculated at EPIC's usual and customary charges.

The lower court relied on Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 532 S.E.2d 868 (2000). The health care facility in that case sought reimbursement for medical care rendered to pre-trial detainees. South Carolina had several statutes related to the treatment of post-conviction inmates, but not pre-trial detainees. The South Carolina Supreme Court found that those statutes expressed legislative intent that jailers should bear expenses, including health care expenses, for inmates following their convictions, but they did not apply to pre-trial detainees. The relevant Utah statute, however, makes no distinction between pre-trial and post-conviction detainees. Utah obligates counties to provide for both.

The analysis in Myrtle Beach Hospital as to *quantum meruit* was poor. Myrtle Beach Hospital held that it was the detainee and not the city who received the benefit of the medical care rendered by outside health care providers. That case found that the city only received an "incidental" benefit and dismissed the fact that obtaining competent medical care for jail inmates discharges Constitutional and common law duties that, were they breached, would give rise to costly liability claims against the City. The value of having EPIC available to discharge the County's Constitutional imperative is not "incidental."

Finally, most courts have ruled that once a duty to provide inmates with necessary medical treatment is established, whether by statute or Constitutional obligation, absent

legislative directive to the contrary, cities or counties are obligated to pay for those services

ARGUMENT

I. THE COUNTY HAS AN OBLIGATION TO COMPENSATE EPIC FOR MEDICAL SERVICES PROVIDED TO INDIVIDUALS IN THE CUSTODY OF SALT LAKE COUNTY.

The services provided by EPIC confer significant value on Salt Lake County. Without the availability of emergency medical services, the County would be exposed to enormous financial liability to its jail population for failing to provide necessary medical care. The benefit conferred on the County by EPIC obligates the County to pay for the reasonable value of EPIC's services.

A. Salt Lake County has a constitutional obligation to provide necessary medical care to individuals in custody.

Inmates at the Salt Lake County jail regularly need medical care while incarcerated. This treatment is generally provided by physicians or other health care personnel hired by the County and working at the jail. However, jail inmates often need emergency medical care that is beyond the resources of the jail to provide on-site. This care is provided by physicians working outside the jail who do not have an express written contract with the County. EPIC, a group of such doctors, brought this action seeking compensation for the reasonable value of the services they provide to Salt Lake County.

EPIC asked the lower court to determine what responsibility Salt Lake County has to pay for emergency medical services provided by private, non-contracted physicians to County jail inmates. The lower court held "that plaintiff's claim in *quantum meruit* fails because . . . it is the inmate, and not the County, that is the primary beneficiary of the medical services provided by plaintiff's physicians." Memorandum Decision, p. 5.

It is well established that governmental entities have a constitutional obligation to provide medical care to inmates and pretrial detainees. The U.S. Supreme Court ruled that governments are Constitutionally required to provide necessary medical care to individuals who are in governmental custody or have been detained. City of Revere v. Massachusetts General Hospital, 463 U.S. 239, 244-45 (1983). This right derives from either the Eighth Amendment (prohibiting cruel and unusual punishment) for individuals who have been formally adjudicated guilty in accordance with the legal process, or under the Due Process Clause of the Fourteenth Amendment for individuals who have been detained or are in the custody of the police before there has been a formal adjudication of guilt. City of Revere, 463 U.S. at 243-44. As to payment for necessary medical care, the Court indicated that: ". . . as long as the governmental entity ensures that the medical care needed is in fact provided, the Constitution does not dictate how the cost of that care should be allocated as between the entity and the provider of the care. That is a matter of state law." 463 U.S. at 245. However, the Supreme Court also stated, "if . . . the

governmental entity can obtain the medical care needed for a detainee only by paying for it, then it must pay . . . ." Revere, 463 U.S. at 244-246. The state law the lower court should have applied in evaluating the County's responsibility to pay EPIC is based on statutory and equitable principles.

B. The terms of Utah Code Ann. §17-50-319 require the County to pay for emergency medical services of jail inmates.

The lower court erred in determining that Utah Code Ann. §17-50-319 did not specifically allocate costs of emergency services to counties. Memorandum Decision, p. 4.[1] The language of the statute makes clear the legislature's intent that the County pay for expenses necessarily incurred in operating its jail system. The title of the statute is "County Charges Enumerated." The Utah statutory scheme contemplates that counties should be responsible for expenses related to their penological duties. Indeed, several provisions in that section contain language that obligates the County to pay for emergency medical services to County jail inmates.

The statute lists a number of charges and expenses for which the County is responsible. The categories of expenses listed in the statute that are relevant to, and broad

[1] The parties below made arguments regarding Utah Code Ann. §17-50-319 (1)(k) & (2). However, the lower Court did not address those arguments. Memorandum Decision, p. 5.

enough to cover, emergency medical services provided by EPIC to County jail inmates are the following:

> (1) County charges are:
>
> > (a) those incurred against the county by any law;
> > (b) the necessary expenses of the county attorney or district attorney incurred in criminal cases arising in the county, and all other expenses necessarily incurred by the county or district attorney in the prosecution of criminal cases, except jury and witness fees;
> > (c) the expenses necessarily incurred in the support of persons charged with or convicted of a criminal offense and committed to the county jail;
> >
> > * * *
> > (f) the contingent expenses necessarily incurred for the use and benefit of the county;
> >
> > * * *
> > (i) the necessary expenses of the sheriff and deputies incurred in civil and criminal cases arising in the county, and all other expenses necessarily incurred by the sheriff and deputies performing the duties imposed upon them by law . . ..

Utah Code Ann. §17-50-319 (1)(a)-(c), (f)&(g). Any one of these provisions is sufficient to conclude that emergency medical expenses incurred by County jail inmates are "county charges" for which the County is responsible to pay. By definition, if the expenses are "necessary," then the County incurs more than an incidental benefit.

C. Under equitable provisions, the County is also responsible to pay for the medical services provided by EPIC and other professional providers up to the amount of benefit conferred on the County.

EPIC's right to be compensated for medical services provided by its physicians also arises out of equitable principles. The lower court ruled that this case does not qualify under the theory of *quantum meruit*. The court primarily based its ruling on its conclusion that the primary beneficiary of the services is the inmate. Memorandum Decision, p. 5.[2]

The lower court erred in ruling that *quantum meruit* principles do not apply to this case. State law equitable principles dealing with contracts implied in law, or implied in fact, apply to provide a remedy to the EPIC physicians.

> *Quantum meruit* has two distinct branches. Both branches, however, are rooted in "justice," . . . to prevent the defendant's enrichment at the plaintiff's expense . . . . Contract implied in law, also known as quasi-contract or unjust enrichment, is one branch of *quantum meruit*. A quasi-contract is not a contract at all, but rather is a legal action in restitution . . . . The elements of a quasi-contract, or a contract implied in law are: (1) the defendant received a benefit; (2) an appreciation or knowledge by the defendant of the benefit; (3) under circumstances that would make it unjust for the defendant to retain the benefit without paying for it . . . . The measure of recovery under quasi-contract, or contract implied in law, is the

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[2] A secondary basis for the lower court's conclusion was that EPIC has a federal statutory duty to provide medical care to jail inmates regardless of their ability to pay. EPIC is required under Emergency Medical Treatment and Active Labor Act ("EMTALA") 42 U.S.C. § 1395 dd, to provide medically necessary care to any person in need of emergency treatment. Nothing in that statute excuses the County from its obligation to pay for obligations incurred.

> value of the benefit conferred on the defendant (the defendant's gain) and not the detriment incurred by the plaintiff . . . or necessarily the reasonable value of the plaintiff's services.

Davies v. Olson, 746 P.2d 264, 269 (Utah App. 1987) (citations omitted). The second branch of *quantum meruit* is as follows:

> A contract implied in fact is a "contract" established by conduct . . . . The elements of a contract implied in fact are: (1) the defendant requested the plaintiff to perform work; (2) the plaintiff expected the defendant to compensate him or her for those services; and (3) the defendant knew or should have known that the plaintiff expected compensation . . . "Technically, recovery in contract implied in fact is the amount the parties intended as the contract price. If that amount is unexpressed, courts will infer that the parties intended the amount to be the reasonable market value for the plaintiff's services."

Id, (citations omitted); *see also* Bailey-Allen Co., Inc. v. Kurzet, 876 P.2d 421, 425-26 (Utah App. 1994). While both branches of *quantum meruit* may apply in this matter, the first branch of *quantum meruit* described in Davies, quasi-contract or unjust enrichment, is most appropriate given the facts of this matter.

1) Salt Lake County receives a benefit by using EPIC doctors to provide necessary health care to County inmates and detainees.

There is no question that Salt Lake County has received and continues to receive a substantial benefit as a result of the medical treatment provided to County jail inmates by EPIC physicians. It discharges a key constitutional duty by using EPIC doctors. The benefit to the County also includes money the County saves by not retaining the full-time services of a staff of physicians capable of dealing with all emergency care that may arise

at the jail, along with associated savings of overhead costs associated with maintaining a health care facility at the jail that is capable of handling a wide variety of medical needs.

The benefit the County realizes is also measured by the degree to which the County minimizes its exposure to pay significant consequential damages to inmates harmed by the County's failure to provide reasonably necessary emergency medical care to jail inmates. By relying on the expertise of EPIC physicians, the County minimizes the damages it might be required to pay inmates who would otherwise bring suit for damages resulting from the failure to provide any emergency medical care (civil right actions), or incompetent emergency medical care (malpractice actions), at the jail.

There is also a public benefit received by the County. Utilizing EPIC physicians to meet the needs of the County in providing emergency medical services to jail inmates is a significantly more efficient method by which the County may fulfill its Constitutional obligation than by duplicating EPIC's professionals and ancillary resources at the jail. Establishing a new health care delivery system at the jail with the range of medical services, including providing doctors, equipment and facilities that exist in the private sector for treatment of emergency conditions is clearly not an efficient use of tax-payer funds.

Alternatively, a measure of damages which is more susceptible to quantification and much more likely than not to be a smaller amount than the value of the benefit

conferred on Salt Lake County, is the usual and customary charges of the physicians for their services. The undisputed facts below establish that the range of charges for EPIC's physician services are based on their expertise, the cost of providing their services and the market rates for similar services from other physicians in the same geographic area. Parker Aff., ¶ 7 (R. 119).

2) The County appreciates and acknowledges the benefits it receives from EPIC.

The County admits that it is Constitutionally required to provide medical services to County jail inmates as the need to provide medically necessary care for the inmates arises. Dial Depo, pp. 11:22-12:9 (R. 100). Likewise, the County acknowledges that on a regular basis, it relies on and regularly utilizes care provided by EPIC physicians. Answer, ¶ 6 (R. 75); Dial Depo, pp. 24:3-28:12 (R. 103-104). The County recognizes that these physicians are highly trained professionals. Id. There is also no question that the County has the resources to pay the physicians and that EPIC physician services confer a substantial benefit on the County and its taxpayers.

3) The County is unjustly enriched by retaining the benefit bestowed by EPIC without remuneration.

The final prong is whether it is unjust for the County to retain the benefit provided by EPIC without paying the EPIC physicians the billed charges for their services. The County argued below that it is willing to pay the EPIC physicians, but only at the

Medicaid rates. It is undisputed that this level of compensation is significantly less than the billed charges for the physicians. Parker Aff., ¶ 5 (R. 118).

The measure of recovery outlined in Davies for this type of equitable relief is "the value of the benefit conferred on the defendant [the County] rather than the detriment incurred by the plaintiff [EPIC]." Davies, 746 P.2d at 269. This usual and customary charge is the same for each EPIC physician, regardless of the identity of the payor. Individual physicians or physicians' groups may choose to enter into contracts with a variety of different payors. However, where there is no contract in place, it is an accepted principle that a payor is legally responsible to pay the reasonable value of the physician's services. That reasonable value should be the usual and customary charges established by the physician for his or her services based on the factors outlined by Robert Parker, EPIC's CEO, in his Affidavit, ¶¶ 6-7 (R. 118-119) . This Court should overturn the lower court ruling, and require the County to pay the billed charges of the EPIC physicians.

II. RELEVANT CASE LAW HOLDS AGAINST THE LOWER COURT DECISION.

In rendering its opinion, the lower court relied on Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 532 S.E.2d 868 (2000). Myrtle Beach Hospital represents the minority position among the courts that have considered this issue. Most courts that have considered this issue, have ruled that once a duty to provide inmates with necessary medical treatment is established, whether by statute or Constitutional obligation, absent

legislative directive to the contrary, cities or counties are obligated to pay for those services. *See, e.g.*, Lutheran Medical Center v. City of Omaha, 429 N.W.2d 347, 351-52 (Neb. 1988) (even in the absence of statutory duty to pay, there is a "common-law implied contractual duty to pay such expenses" to the provider of necessary medical expenses); Union County v. Warner Brown Hospital, 762 S.W.2d 798, 799 (Ark. 1989) (County has obligation not only to supply necessary medical treatment but to pay for it when necessary); Spicer v. Williamson, 132 S.E. 291, 294-95 (N.C. 1926) (County is required to provide and, when necessary, pay for necessary medical services to inmates); Hospital Bd. of Directors of Lee County v. Durkis, 426 So.2d 50, 51 (Fla. App. 1982) (Hospital can recover its necessary and reasonable charges of providing care to inmate in light of Sheriff's legal duty to provide access to medical treatment); Poudre Valley Health Care, Inc. v. City of Loveland, 85 P.3d 558, 559-61 (Colo. App. 2003) (where statute imposes duty to provide medical care for inmates and is silent as to who bears cost, municipality must pay the amount of the claimed costs); The United Hospital v. D'Annunzio, 514 N.W.2d 681, 684-686 (N.D. 1994) (statute creating duty to provide medical treatment to inmates carries with it implied obligation to pay for that treatment); Harrison Memorial Hospital v. Kitsap County, 700 P.2d 732 (Wash. 1985) (Washington state statutes impose liability for medical expenses incurred by jail inmates); and, Smith v. Linn County, 342 N.W.2d 861, 863 (Iowa 1984) (statutory obligation to "furnish . . . medical aid" to county

jail inmates together with state statute which makes as a county expense "all charges and expenses for the safekeeping and maintenance of prisoners" carries with it an obligation to pay the provider of care).[3]

A closer look at two of these cases reinforce the County's obligation to pay EPIC's billed charges. In Poudre Valley Health Care the issue was "whether a governmental entity has an obligation to pay for outside medical costs incurred in the care and treatment of a pretrial detainee in its custody." Id. at 559. Pursuant to the Revere case, the Colorado Court of Appeals recognized that it "must apply Colorado law in determining whether the City is liable for the costs incurred by the Hospital in affording medical care and treatment to the pretrial detainee." Id. There was no Colorado statute that expressly addressed the issue. Id. at 560. However, the court found that the general statute regarding persons in custody contained an implied obligation to pay the costs of medical care. The Colorado statute reads:

> Persons arrested or in custody shall be treated humanely and shall be provided with adequate food, shelter, and, if required, medical treatment.

Colorado Rev. Statutes § 16-3-401 (2) (2002). Thus, the court found,

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[3] The Smith case was procedurally odd. It was brought by the prisoner asserting that the County should reimburse him for injuries incurred after his arrest. The court refused reimbursement to Smith, but affirmed that "jailers [must] make . . . life-sustaining necessities as medical services available to all prisoner and to assure payment by the appropriate governmental unit to person who provide those services." Smith, 342 N.W.2d at 863 (emphasis added).

> where . . . a state statute unambiguously imposes a duty on governmental entities to provide medical treatment and care for detainees in their custody, such a duty includes or, at a minimum, implies an inherent obligation to pay the costs of such treatment and care.

Poudre Valley Health Care, 85 P.3d at 561. Utah imposes a similar duty on counties for "the expenses necessarily incurred in the support of persons charged with or convicted of a criminal offense and committed to the county jail." Utah Code Ann. §17-50-319 (1) (b).

After the U.S. Supreme Court decision in Revere, Nebraska reexamined the issue of payment to medical providers for care provided to inmates in Lutheran Medical Center, *supra* ("Lutheran II"). In a dispute between the same parties, Nebraska had previously found that governmental entities indeed had a duty to pay health care providers for medical care rendered to those in custody in Lutheran Medical Center v. City of Omaha, 281 N.W.2d 786 (1979) ("Lutheran I"). In both cases, the Nebraska Court discussed the relationships between police, detainee, and health care provider:

> The concept that an imprisoning authority has a legal obligation to supply medical services to prisoners is not of recent origin, nor was it originally based on statutes. At common law, it was stated: "The rule where a person requests the performance of a service, and the request is complied with, and the service performed, there is an implied promise to pay for the services, does not apply where a person requests a physician to perform services for a patient, *unless the relation of that person to the patient is such as raises a legal obligation on his part to call in a physician and pay for the services*, or the circumstances are such as to show an intention on his part to pay for the services . . . .

Lutheran II, 429 N.W.2d at 348 (*quoting* Lutheran I, 281 N.W.2d at 788 (emphasis in original)(additional citations omitted)). In situations where an individual requiring medical care is in custody, and based upon the relation between the patient and the detaining entity, Lutheran I found not only a constitutional duty to provide such medical care, but a common-law liability to pay for such medical care.

After Revere, the Nebraska Supreme Court reaffirmed unequivocally Nebraska's "common-law liability [for government entities] to pay for medical treatment required by a person in policy custody . . . ." Lutheran II, 429 N.W.2d at 352. Thus, even absent a statute on point, Nebraska found a duty for governmental agencies to pay for medical treatment of inmates and detainees. In this case, EPIC's position is strengthened, again, by the fact that the statutory scheme clearly contemplates that counties should be responsible for "the expenses necessarily incurred in the support of persons charged with or convicted of a criminal offense and committed to the county jail." Utah Code Ann. §17-50-319 (1) (b).

In addition to being the minority position, the analysis in Myrtle Beach Hospital as to *quantum meruit* was poor. Myrtle Beach Hospital held that it was the inmate and not the city who received the benefit of the medical care rendered by outside health care providers, an argument adopted by the court below. Relegated to a footnote is the acknowledgment that the City of Myrtle Beach obtains benefit by satisfying its

Constitutional duty to ensure that inmates receive medical care. Myrtle Beach Hospital, 532 S.E.2d at 873 n.12. However, the footnote refers to this benefit as "incidental" and brushes aside the fact that obtaining competent medical care for jail inmates discharges Constitutional and common law duties that, were they breached, would give rise to costly liability claims against the City. The same is true for the County. The value of having EPIC available as a means to discharge the County's Constitutional imperative in this case is not "incidental."

Myrtle Beach Hospital saw a distinction between pre-trial detainees and post-conviction inmates. The health care facility in that case sought reimbursement for medical care rendered to pre-trial detainees. Id. at 869. To support its claim, the health care facility cited statutes that dealt only with post-conviction inmates. Id. at 871. Those statutes related to

> the State's policy to render 'humane treatment' to persons serving a term in the State Penitentiary . . .; [a statute] instructing that the DOC director is responsible 'for the proper care, treatment, feeding, closing, and management of the prisoners confined therein' . . .; a statute requiring certain entities using state convicts to reimburse the DOC for 'moneys expended . . . for medical attention . . .' . . .; and, to provisions made for the comfort and treatment of prisoners in county jail . . . and of convicts working on chain gangs.

Id. (citations omitted) (emphasis added). The South Carolina Supreme Court found that

> these statutes express the legislative intent that jailers (whether county of state) are to bear the expenses, including those incurred in rendering health care, for persons incarcerated following their convictions.

Id. (emphasis added). The South Carolina Supreme Court stated: "the Hospital acknowledges, as it must, that no state statute requires the City to bear the medical expenses of the pre-trial detainees." Myrtle Beach Hospital, 532 S.E.2d at 870 (emphasis added). Utah Code Ann. §17-50-319 makes no distinction between pretrial detainees and post-conviction inmates. Utah obligates the County to provide for both, a component missing for the hospital that provided medical services to pre-trial detainees in Myrtle Beach Hospital. Utah Code Ann. §17-50-319 establishes a duty of the County not only to provide medical treatment to inmates but also to pay for that treatment.

The County argued below that the express, unambiguous terms of that statute demonstrate a knowing choice by the legislature to require the County to pay for only medical services provided by health care facilities and to deny any right whatsoever for professional health care providers to recover any payment for their services. Nothing in Myrtle Beach Hospital supports such a reading of the statute. In effect, the County attributes to the legislature an intent to require the County to pay for the facility charges arising out of the treatment of an inmate while requiring that the professional health care providers who render services to the same inmate at the same time do so for free. This is not a rational interpretation of the statute. It is especially unjustified in light of the legislative history of Utah Code Ann. §17-50-319.

III. THE BENEFIT CONFERRED ON THE COUNTY AS A RESULT OF EPIC'S SERVICES IS SIGNIFICANT AND TRIGGERS A DUTY TO PAY THE REASONABLE VALUE OF THOSE SERVICES.

Should this Court overturn the ruling below, the sole remaining issue would be whether the County can force the EPIC doctors to accept Medicaid rates or whether the EPIC doctors can obtain from the County the reasonable value of their services. Any doubt regarding this issue resolved by the legislative history of Utah Code Ann. §17-50-319 (1)(k). During legislative debate on the amendment to Utah Code Ann. §17-50-319, proposed language referring to medical services provided by a "health care provider" was purposefully deleted to ensure that the scope of the legislation did not require that health care professionals (as opposed to health care facilities) be compelled to accept payment at Medicaid rates. King Aff., Exhibits A and B (R. 127-128; 130); Antinori Aff., ¶¶ 6 – 7 (R. 115-116).

Health care professionals, such as emergency room doctors, opted out of the amendments to Utah Code Ann. §17-50-319 because the disparity between the fee schedules established by Medicaid for reimbursement of health care facilities for emergency services versus the reimbursement rate for emergency room physicians relative to those providers' billed charges is significant. While health care facilities are reimbursed at a rate of approximately 98% of the health care facility's usual and customary charges for emergency room services under the Medicaid schedules, those

schedules pay only a range of between 18 to 27% of usual and customary emergency room physician charges. Parker Aff., ¶ 5-6 (R. 118); Antinori Aff, ¶ 7 (R. 116).

CONCLUSION AND RELIEF SOUGHT

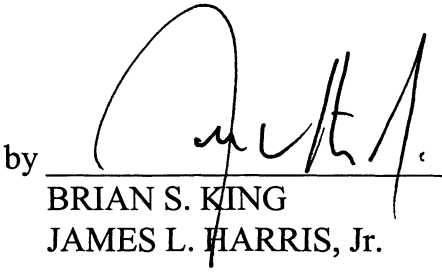
The County has a Constitutional obligation to provide necessary medical care to its inmates. The County recognizes that to the extent it fails to carry out this Constitutional duty, it may be liable to a claim for damages arising out of harm caused to inmates. Consequently, the County regularly utilizes the services of private health care facility and professional medical providers to discharge its Constitutional obligation.

The result the lower court reached could not have been the intent of the Supreme Court in Revere. Nothing in Revere suggests that the County may emergency physicians as the lower court's ruling has done in this case. The services provided to jail inmates by EPIC physicians confer a significant benefit on the County. Under the circumstances of this case, it would be unjust for the County to retain that benefit without paying for it. Because the actual benefit realized by the County is difficult to measure, the County should at least be required to pay the reasonable market value of the services provided by EPIC. That is the billed charges of the physicians for their services.

This Court should overturn the lower court ruling, and require the County to pay the billed charges of the EPIC physicians.

RESPECTFULLY SUBMITTED this 9th day of JUNE 2006.

Attorneys for PLAINTIFF/APPELLANT

by 

BRIAN S. KING
JAMES L. HARRIS, Jr.

ORAL ARGUMENT REQUESTED

These issues implicate important rights and will affect the dealings of health care providers and governmental agencies. Theses issues reach beyond the immediate parties. Appellant believes that oral argument will give the parties a beneficial opportunity to explain their respective positions and to answer questions from the Court.

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed two true and correct copies of the foregoing BRIEF OF APPELLANT to:

David Yocom
SALT LAKE COUNTY DISTRICT ATTORNEY
Donald H. Hansen
Melanie Mitchell
SALT LAKE COUNTY DEPUTY DISTRICT ATTORNEYS
2001 South State Street, S3700
Salt Lake City, UT 84190

on the 9th day of JUNE, 2006, postage prepaid in the United States Postal Service.

by: Linda Purdy
Linda Purdy

APPENDIX/ATTACHMENTS

Attachment "A": Utah Code Ann. §17-50-319.

Attachment "B": Memorandum Decision, entered on February 8, 2006 (R. 229-234).

ATTACHMENT "A"

Utah Code Ann. §17-50-319 (1953 as amended).

4 of 6 DOCUMENTS

*** STATUTES CURRENT THROUGH THE 2005 SECOND SPECIAL SESSION ***
*** ANNOTATIONS CURRENT THROUGH 2006 UT 7, 2006 UT APP 33 ***
*** FEBRUARY 9, 2006(FEDERAL CASES) ***

TITLE 17. COUNTIES
CHAPTER 50. GENERAL PROVISIONS
PART 3. COUNTY POWERS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Utah Code Ann. § 17-50-319 (2006)

§ 17-50-319. County charges enumerated

(1) County charges are:

(a) those incurred against the county by any law;

(b) the necessary expenses of the county attorney or district attorney incurred in criminal cases arising in the county, and all other expenses necessarily incurred by the county or district attorney in the prosecution of criminal cases, except jury and witness fees;

(c) the expenses necessarily incurred in the support of persons charged with or convicted of a criminal offense and committed to the county jail;

(d) for a county not within the state district court administrative system, the sum required by law to be paid jurors in civil cases;

(e) all charges and accounts for services rendered by any justice court judge for services in the trial and examination of persons charged with a criminal offense not otherwise provided for by law;

(f) the contingent expenses necessarily incurred for the use and benefit of the county;

(g) every other sum directed by law to be raised for any county purposes under the direction of the county legislative body or declared a county charge;

(h) the fees of constables for services rendered in criminal cases;

(i) the necessary expenses of the sheriff and deputies incurred in civil and criminal cases arising in the county, and all other expenses necessarily incurred by the sheriff and deputies performing the duties imposed upon them by law;

(j) the sums required by law to be paid by the county to jurors and witnesses serving at inquests and in criminal cases in justice courts; and

(k) for a county of the first or second class and subject to Subsection (2), expenses incurred by a health care facility in providing medical services at the request of a county sheriff for existing conditions of:

(i) persons booked into a county jail on a charge of a criminal offense; or

(ii) persons convicted of a criminal offense and committed to a county jail.

(2) (a) Expenses described in Subsection (1)(k) are a county charge only to the extent that they exceed any private insurance in effect that covers those expenses.

(b) If there is no contract between a county jail and a health care facility that establishes a fee schedule for medical services rendered, expenses under Subsection (1)(k) shall be commensurate with the current noncapitated state Medicaid rates.

(c) Subsection (1)(k) does not apply to expenses of a person held at the jail at the request of an agency of the United States.

HISTORY: R.S. 1898 & C.L. 1907, § 538; C.L. 1917, § 1434; R.S. 1933, 19-11-17; L. 1941, ch. 20, § 1; C. 1943, 19-11-17; L. 1977, ch. 212, § 6; 1987, ch. 181, § 1; 1988, ch. 152, § 2; 1990, ch. 59, § 5; 1993, ch. 38, § 8; C. 1953, 17-15-17; renumbered by L. 2000, ch. 133, § 75; 2001, ch. 249, § 1.

NOTES:
AMENDMENT NOTES. --The 2001 amendment, effective April 30, 2001, added Subsections (1)(k) and (2) and redesignated subsections.

CROSS-REFERENCES. --County audit, notice of, § 17-36-40.
Courtrooms, cost of furnishings, § 78-7-13.
Prisoners, care of generally, § 17-22-8.
Sanity hearings, costs of, § 77-15-9.
Settlement and allowances of accounts by county legislative body, § 17-53-305.

NOTES TO DECISIONS

ANALYSIS
Expenses of county attorney.
Cited.

EXPENSES OF COUNTY ATTORNEY.
While the district attorney, under Subsection (2) of this section, may incur necessary expenses in prosecution of criminal cases and may make them county charges, he may not bind the county beyond what is reasonably necessary, or for services rendered beyond the reasonable value thereof. *Kytka v. Weber County, 48 Utah 421, 160 P. 111 (1916).*

CITED in *Allison v. Utah County Corp., 335 F. Supp. 2d 1310 (D. Utah 2004).*

COLLATERAL REFERENCES

C.J.S. --20 C.J.S. Counties § 172 et seq.

ATTACHMENT "B"

Memorandum Decision, entered on February 8, 2006 (R. 229-234).

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

EMERGENCY PHYSICIANS INTEGRATED CARE, Plaintiff, vs. SALT LAKE COUNTY, a political subdivision of the state of Utah, Defendant.	**MEMORANDUM DECISION and ORDER** Case No. O30901884 Judge Paul G. Maughan

Before the Court are the parties' respective Motions for Partial Summary Judgment. Argument was heard by the court on December 15, 2005. At the conclusion of the hearing the court requested additional briefing from the parties regarding the County's obligation to provide emergency medical care to its jail inmates under the Supreme Court's opinion in *City of Revere v. Massachusetts General Hospital* 463 U.S. 239 (1983). The parties supplemental briefing was submitted on January 17, 2006.

For the reasons set forth below the court denies the Plaintiff's Motion for Partial Summary Judgment and grants the County's Motion for Summary Judgment to the extent that the Plaintiff has not shown that it is entitled to recover under a claim of *quantum meruit*.

I. Summary of Issues.

The Plaintiff, EPIC, has brought suit in *quantum meruit* against the County to recover emergency physician expenses incurred in the treatment of County jail inmates who have been transferred for treatment from the County's jail to various hospitals staffed by EPIC physicians. In doing so, the Plaintiff asks the Court to find that because the County is constitutionally obligated under *City of Revere* to provide medical care to inmates the County is benefitted by the

inmates' treatment; that the County knew it had received a benefit; and that the County has not adequately compensated the Plaintiff for that benefit.

The County argues that it has been paying for the emergency room physician's services pursuant to the state's uncapitated Medicaid rate. The County argues that it is paying that rate absent an agreement between the parties pursuant to Utah Code Section 17-50-319 (1)(k) and (2). Therefore the issue before the court is whether the Plaintiff is entitled to additional compensation under its theory of *quantum meruit*.

The County has also opposed this action claiming that it is immune from suit under the state's Governmental Immunity Act, Section 63-30-1 et. seq. Utah Code. The Plaintiff correctly argues that the Act does not apply to claims in equity. See *Buckner v. Kennard*, 99 P.3d 842 (Utah 2004).

II. Background.

Members of the County's jail population regularly require medical attention. Much of this care is provided on site by medical staff employed by, or under contract with, the County. There are occasions when an inmate's medical condition requires more care than can be provided at the jail's on site infirmary. On such occasions these inmates are transferred to a medical facility where they are sometimes treated by EPIC physicians.

EPIC is a Utah limited liability corporation which was formed to provide billing and collection services for a number of emergency physicians in the state of Utah. Many of the physicians who have an ownership interest in EPIC have provided emergency medical services to County jail inmates. These physicians now seek to recover payment under *quantum meruit* for those services above and beyond the statutory medicaid reimbursement rate that is currently used by the County.

III. Summary Judgment Standard.

Summary judgment is appropriate when the court determines that "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56. On a motion for summary judgment, the court "'view[s] the facts and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party.'" *Young Elec. Sign Co., Inc. V. State ex rel Utah Dept. Of Transportation*, 110 P.3d 1118, 1119 (citations omitted).

IV. Discussion **and findings.**

In order to recover in *quantim meruit*, EPIC must first establish that it has, or is, conferring a benefit upon the County. EPIC argues that by treating county jail inmates that it is conferring a significant, as opposed to an incidental, benefit upon the County, and without such treatment, the County could face significant financial exposure. EPIC also argues that the County's constitutional duty under the Eighth amendment to provide for medical treatment received by its inmates also extends to the duty to pay for those services. At first blush, this argument seems both logical and persuasive. However, upon scrutiny, the Court finds that it is neither.

In *City of Revere* the United States Supreme Court held that the due process clause requires a governmental entity to provide medical care to individuals who have been injured while being apprehended by the police. The Court then noted that the 8th Amendment provides the same protection to inmates. The Court held that the governmental entity fulfills it 8th Amendment obligations to incarcerated individuals by seeing that individuals are promptly taken to a hospital and provided necessary medical care. 463 U.S. 239, 244-245 (1983). In so holding the Court stated that as long as the governmental entity ensured that required medical care was in fact provided, the Constitution does not dictate how the cost of that care should be allocated between the governmental entity and the medical provider. That issue, the court said, was a matter of state law. *City of Revere*, makes clear that the county's proscription of cruel and unusual punishment is violated only by a deliberate indifference to an inmate's need for medical care. Likewise, that duty is not violated so long as a sick or injured inmate is timely transported to a medical facility that can provide the necessary and required medical attention.

In *Myrtle Beach Hospital, Inc. v. City of Myrtle Beach*, 532 S.E.2d 868 (2000), the South Carolina Supreme Court applied *Revere* in denying a claim in *quantum meruit* where a hospital had claimed that it had conferred a benefit upon the defendant city by rendering medical care to detainees of the city. The court held that it was the detainee and not the city that received and retained the benefit of medical care. Id. At 872. It further held that the only duty upon the city, under the due process clause of the Constitution, was to see that the detainees were taken to a hospital to receive necessary treatment. The city was not required, under *Revere*, to pay for that treatment. This was despite the Court's acknowledgment in a footnote a that the city had

received an incidental benefit by seeing that the inmates had received the required medical care. Id at 873.

In the present case, the Court finds *Myrtle Beach Hospital* persuasive. The court holds that the inmate, and not the County, is the primary beneficiary of the medical care rendered. The County should not be placed in the position of an insurer for medical care solely on the basis that an individual requires medical attention while an inmate. That same person, absent custody status, could present at a medical facility staffed by EPIC physicians and receive the same care. That person would still be the primary beneficiary and would have the primary obligation to pay for those services. The County does not assume the liability or obligation for medical care for individuals who knowingly or intentionally violate the law and subsequently become inmates under the state's penal system.

The Court finds that EPIC understates its own statutory duty to provide emergency medical care to any individual, regardless of custody status under federal law. (See, Emergency Medical Treatment and Active Labor Act ("EMTLA"), 42 U.S.C. § 1395(d).) EPIC has an obligation to provide medically necessary treatment regardless of the patient's ability to pay for those services under this Act. The burden of paying the cost of treatment falls first to the inmate, and then to the physician.

Both parties have discussed the various provisions of Utah Code Section 17-50-319 as support for their argument that the state has or has not provided a statutory basis for the full payment of EPIC's fees. The Plaintiff especially relies upon subsections (a), (b), (c), (f) and (i). These sections, however, are all general provisions that deal with expenses incurred by the County or by the County's sheriff, but do not specifically address the payment of the fees for medical services. There is nothing in Utah Code Section 17-50-319 that indicates that the state has specifically allocated the costs of emergency physician services to counties.

Plaintiff also cites numerous state cases which have held local governments accountable for payment for emergency medical services rendered. The Court finds these cases are actually in line with its decision today. As stated in City of Revere, a state can allocate the cost of inmate care to a city, county or other governmental entity. .These cases generally involve states, unlike Utah, that have allocated those costs to local governments by statute, common law or by assumption of the duty through a course of dealing.

CONCLUSION AND ORDER

For the reasons set forth above, the Court concludes that plaintiff's claim in *quantum meruit* fails because the Court finds that it is the inmate, and not the County, that is the primary beneficiary of the medical services provided by plaintiff's physicians. Secondly, it is the inmate that has the primary duty and obligation to pay for those services. And finally, the plaintiff's physicians have an affirmative duty, under federal law, to provide medical care, regardless of the patient's ability to pay for those services.

The duty to pay for this treatment is a matter that should be better addressed by state law, and that the provisions referenced above regarding Section 70-50-319(a), (b), (c), (f) and (i) do not require the County to pay for those services under those provisions.[1] The Court finds that the County has met its Eighth Amendment and due process requirements under the Constitution by seeing that the inmates are not denied emergency medical treatment that they are required to receive. The Court, therefore, denies the plaintiff's Motion for Partial Summary Judgment, and grants the County's Motion for Partial Summary Judgment to the extent that the County is not required to pay Epic Medical fees under Epic's claim of *quantum meruit*.

The Defendant is to prepare the appropriate order.

Dated this 6 day of February, 2006.

Paul G. Maughan
District Court Judge

[1]Both parties argue the applicability of Section 17-50-319(1)(k) and (2); because the Court finds that the Plaintiff has failed to meet its burden under *quantum meruit*, the Court does not address this argument.

Certificate of Notification

I certify that I mailed a true and correct copy of this Memorandum Decision and Order to the following on this 8 day of February 2006:

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